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DW-08-01

Paper No. 15
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COPY MAILED

AUG 30 2001

In re Application of
Longstreth
Application No. 09/025,896
Filed: February 18, 1998
For: CABBAGE CUTTER

OFFICE OF PETITIONS
ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed on August 2, 2001, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision (no fee) must be submitted within **TWO (2) MONTHS** from the mailing date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted.

This application became abandoned on November 26, 1999 for failure to timely submit a proper reply to the final Office Action, mailed on August 25, 1999, which set a shortened statutory period of 3 months for reply.¹ On November 4, 1999, a proposed Substitute Specification was filed in response to the August 25, 1999 final Office Action. However, even though timely filed, as stated in a November 30, 1999 Advisory Action, this November 4, 1999 proposed Substitute Specification failed to place the application in condition for allowance and was not entered. On December 9, 1999, Applicant submitted another set of proposed Substitute Specification which, though initially not matched with the application, was later determined to still not place the application in condition for allowance, as is indicated in the July 6, 2001 Examiner Letter. A Notice of Abandonment had been mailed on April 11, 2000.²

The instant petition contains a third set of proposed Substitute Specification which, upon review by the Examiner, is again determined to not place the application in condition for allowance in that it raises new issues. A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date

¹ The 3-month reply period ended on 11/25/99, Thanksgiving Day, a Federal holiday. Thus, the reply would have been accepted on 11/26/99, the following business day. See 37 CFR 1.7(a).

² See MPEP 711.03(c)(III)(A) (Rev. 1, Feb. 2000): "[A] petition to revive under 37 CFR 1.137 must be accompanied by, *inter alia*, the required reply (emphasis added) . . . [T]he required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed." Thus, a proposed Substitute Specification must both *prima facie* place the application in condition for allowance and be filed timely to prevent the application from becoming abandoned.

for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). As explained above, the instant petition lacks item (1), the required reply to the August 25, 1999 final Office Action, e.g., an amendment that *prima facie* places the application in condition for allowance.³

The Office acknowledges receipt of the \$620 petition fee (small entity).

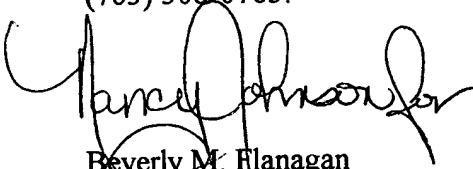
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Beverly M. Flanagan
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³ In the instant case, the "reply" may also be in the form of a Notice of Appeal (and appeal fee), the filing of a continuation application or a request for continued examination (RCE); see MPEP 711.03(c)(III)((A)(2) (Rev. 1, Feb. 2000).